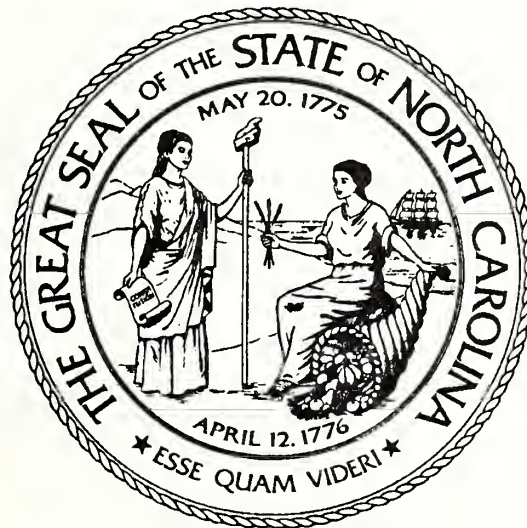


LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

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**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27611**



June 26, 1989

This document contains the eleven preliminary assessment reports and the eleven final assessment reports issued during the 1989 legislative session by the Legislative Committee on New Licensing Boards pursuant to Article 18A of Chapter 120 of the General Statutes and Senate and House rules. The eleven final reports appear first, arranged alphabetically by the title of the profession or occupation involved, and followed by the preliminary reports. Supplementary reports, if issued by the Committee, will be published separately.

Questions concerning any of the reports may be directed to the Committee's legal counsel, Mr. Linwood Jones, at (919) 733-2578.

FINAL REPORTS

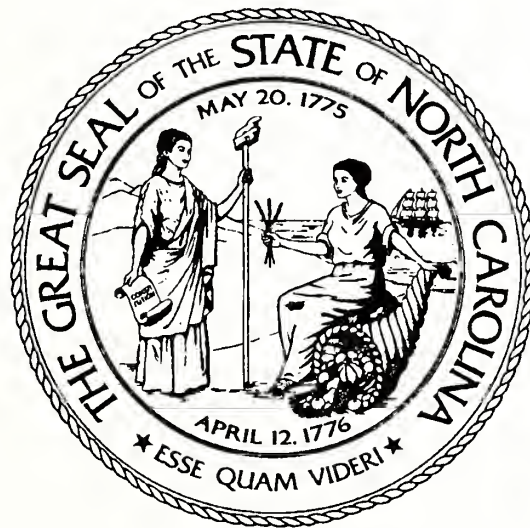
ACUPUNCTURE	1
CREMATORY OPERATORS.....	5
DIETETICS/NUTRITION	9
ELECTROLYSIS	14
ESTHETICIANS	16
FIRE SPRINKLER CONTRACTORS.....	20
MASONRY CONTRACTORS	25
NAIL SCULPTORS	29
RADIOLOGIC TECHNOLOGY	36
REAL ESTATE APPRAISAL	41
RESPIRATORY THERAPY.....	45

PRELIMINARY REPORTS

ACUPUNCTURE	49
CREMATORY OPERATORS.....	52
DIETETICS/NUTRITION	56
ESTHETICIANS	61
ELECTROLYSIS	65
FIRE SPRINKLER CONTRACTORS.....	68
MASONRY CONTRACTORS	73
NAIL SCULPTORS	77
RADIOLOGIC TECHNOLOGY	81
REAL ESTATE APPRAISAL	85
RESPIRATORY THERAPY.....	89

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

ACUPUNCTURE



FINAL ASSESSMENT REPORT (HOUSE BILL 1209)

JUNE 13, 1989

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27611



June 6, 1989

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Senator Howard Bryan
Senator David Parnell
Senator Marshall Rauch

Clerk: Margaret Wallace
(919) 733-5824

Counsel: Linwood Jones
(919) 733-2578

Additional copies of this report may be obtained from the Legislative Library after June 19, 1989.

Final Report Acupuncture

RECOMMENDATION:

The Legislative Committee on New Licensing Boards recommends that the General Assembly do not give favorable consideration to the proposal to license acupuncturists, but that the General Assembly consider creating a study committee to study the feasibility of establishing one "umbrella" licensing board with jurisdiction over several health-allied professions, including acupuncture.

FINDINGS:

Acupuncture is a branch of traditional Chinese medicine, involving primarily the insertion and manipulation of needles at specific points on or near the surface of the skin. Although the exact number of practitioners of acupuncture in North Carolina is unknown, there are in fact very few (estimates range from 8 to 15 individual practitioners who are non-physicians). There are also some physicians who practice acupuncture.

The most prominent dangers of acupuncture are the puncture of body organs with needles, the transmission of hepatitis and other diseases by the needles, and the commission of fraud by a person who renders "services" that provide no real benefit to the patient.

The Committee finds that the practice of acupuncture does require specialized skill and training and differs from ordinary labor in the amount of skill and knowledge required to perform acupunctural techniques. Voluntarily-certified acupuncturists currently complete up to three years of specialized academic training.

The Committee also finds that the public may not be capable of evaluating the competency of practicing acupuncturists and may be confused whether acupuncturists possess the same kind and degree of training that a licensed physician in this State possesses. However, the Committee is unable to recommend favorable consideration of House Bill 1209 at this time for three reasons. First, the Committee is concerned whether the proposed Acupuncturist Licensing Board can remain financially self-sustaining through license renewal fees, examination fees, and related fees on a long-term basis since there are very few practitioners in the State. Second, the Committee feels that a more in-depth study of the relationship of the practice of acupuncture to the practice of medicine is needed before the Committee can determine whether acupuncture should be regulated by an independent board such as that proposed in House Bill 1209. Third, the Committee believes that a study committee should be formed to study the feasibility of creating an "umbrella" board to license several of the health-allied professions, including acupuncture.

**Final Report
Acupuncture
Page Two**

For the reasons given above, the Legislative Committee on New Licensing Boards recommends that the General Assembly do not give favorable consideration to House Bill 1209 and recommends further that the General Assembly consider forming a study committee to examine the issue of a health-allied "umbrella" licensing board.

LCONLB-28A

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

CREMATORY OPERATORS



FINAL ASSESSMENT REPORT (HOUSE BILL 1307)

JUNE 13, 1989

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27611



June 6, 1989

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Counsel: Linwood Jones
(919) 733-2578

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RECOMMENDATION:

The Legislative Committee on New Licensing Boards recommends that the General Assembly give favorable consideration to the proposal to license crematory operators.

FINDINGS:

There are approximately 23 crematoriums currently in operation in North Carolina. Under House Bill 1307, the term "crematory" includes both the cremation chamber where the cremation actually takes place and the holding facility that is used for retention of bodies prior to cremation.

House Bill 1307 proposes a unique method of administrative regulation over crematory operators by establishing a Crematory Authority as an independent agency under the existing Board of Mortuary Science. The Board of Mortuary Science currently licenses funeral service directors and embalmers and regulates funeral practices but lacks jurisdiction over crematory operators.

The potential harm attributable to negligent crematory operators and their cremation practices include the commingling of remains of more than one body, improper disposal of remains, improper storage of bodies awaiting cremation, failure to pulverize the bones and bone fragments remaining after the cremation process, and early cremation that destroys evidence needed by law enforcement officers.

House Bill 1307 is before the Committee for review because of the provision in proposed G.S. §90-210.43(d) that allows the Crematory Authority to establish standards which the manager must meet. Unlike most licensing board proposals, House Bill 1307 does not specify what standards a crematory operator would have to meet in order to be licensed. It is the Committee's understanding, however, that these standards would not consist of restrictive educational, experience, or examination standards as required by most licensing boards, such as the Board of Mortuary Science. The standards would instead relate to professional misconduct in the operation of a crematory, as reflected in the list of offenses for which a crematory operator's license could be revoked under proposed G.S. §90-210.43(f).

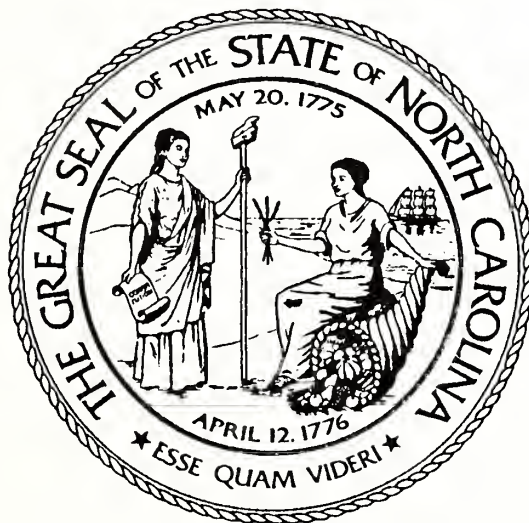
**Final Report
Crematory Operators
Page Two**

House Bill 1307 does not restrict or prevent individuals from entering into the crematory operation business through educational requirements, examinations, and apprenticeship. Instead, it primarily establishes standards to be followed in operating the crematory facility. With the understanding that the crematory operators will not be subject to the typical educational, examination, or apprenticeship requirements imposed by most licensing boards, the Committee recommends that House Bill 1307 be given favorable consideration by the General Assembly.

LCONLB-29A

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

DIETETICS/NUTRITION



FINAL ASSESSMENT REPORT (HOUSE BILL 710) (SENATE BILL 655)

JUNE 6, 1989

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27611



June 6, 1989

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Additional copies of this report may be obtained from the Legislative Library after June 14, 1989.

RECOMMENDATION:

The Committee on New Licensing Boards recommends that the General Assembly consider legislation proposing the licensure of dietitians and nutritionists.

FINDINGS AND CONCLUSIONS:

(1) The unregulated practice of dietetics/nutrition will substantially harm or endanger the public health, safety, or welfare.

The practice of dietetics and nutrition care involves nutritional counseling, nutritional needs assessment, and the evaluation, development and maintenance of appropriate standards of quality in food and nutrition services. Nutritional needs assessment includes assessment of diet history and past medical history, food and drug interaction, behavior modification, and related needs assessments. Although the number of consumers using the services of dietitians and nutritionists is unknown, at least 1/2 million consumers are expected to be direct users of these services through hospitals, clinics, child care, prisons, and school food service.

The increased promotion of low-calorie diets, high vitamin and mineral supplements, and expensive food products, some of which are either of little or no nutritional value and some of which may lead to medical problems, poses a threat to the public health, safety, and welfare, especially considering the large number of customers of diet centers and other dietetic services. In addition, there are numerous documented instances in which grossly unqualified practitioners and "self-styled" nutritionists have incompetently rendered advice to their patients, leading to serious medical problems for the patients.

The practice of dietetics and nutritional care involves specialized knowledge and training and has a substantial impact upon the health of patients and customers of dietitians, nutritionists, diet centers, and other dietetic services. The unregulated practice of dietetics and nutritional care will substantially harm or endanger the public health, safety, or welfare.

(2) The practice of dietetics/nutrition possesses qualities that distinguish it from ordinary labor.

The practice of dietetics/nutrition is distinguishable from ordinary labor since knowledge of physiology, anatomy, chemistry, and related medical disciplines, and knowledge about foods, vitamins and minerals, the potencies at which vitamins are most useful and/or toxic, and their application to specific nutritional or dietary needs is required in order to offer sound nutritional or dietetic advice.

(3) The practice of dietetics/nutrition requires specialized skill and training.

Some degree of training beyond that required of ordinary endeavors is required in order to practice dietetics and nutritional care competently. The two bills proposing to require licensure of dietitians require at least a baccalaureate degree with a major course of study in human nutrition, dietetics, or related areas, plus 900 hours of supervised clinical experience and passage of an examination.

(4) A substantial majority of the public do not have sufficient knowledge or experience to evaluate the competence of dietitians and nutritionists.

A substantial majority of the public do not have the knowledge and experience to evaluate the competence of dietitians and nutritionists. There has been a great deal of misplaced reliance on the media by consumers of dietetic and nutrition care services. Use of the telephone book's Yellow Pages does not give the public a true indication of which practitioners are competent since there are currently no restraints on a practitioner's advertising as a dietitian or nutritionist. It has been shown to the Committee that a large number of practitioners are misrepresenting or falsifying their credentials.

(5) The Committee makes no determination whether licensure of dietitians and nutritionists would have a substantial adverse economic impact upon consumers of the dietitians' and nutritionists' services.

(6) The public cannot be effectively protected by other means.

It appears that current regulations and restraints on the provision of dietetic and nutritional care services as well as current health care policies are insufficient to protect the public. There are available to the public existing laws to deal with deceptive and misleading advertising, the unlawful practice of medicine, and the labeling of vitamins and minerals, but they do not appear to be sufficient to protect the public. For example, despite years of effort by the Food and Drug Administration, attempts to limit the potencies, combination, and numbers of vitamins issued to consumers by dietitians, health food stores, etc. have failed; Congress has since prohibited the FDA from placing such limits on vitamins and minerals, except for special populations such as children and pregnant women (21 U.S.C. §350, 1976).

In addition, current health care policies and employment practices of institutions do not protect all segments of the population. Special needs populations such as hospital patients and public school children are to some extent protected by the imposition of minimum qualifications upon nutritionists and dieticians serving those populations. For example, the food service supervisors in North Carolina's public schools are required to have either a Master's Degree and 1 year of food service experience or a Bachelor's Degree and 2 years of food service experience. Nearly all the supervisors have obtained their degrees in food service-related fields. Individual dietetic needs are referred by the supervisors to qualified dieticians for further assessment and action. Many of the State's public and private hospitals also employ or contract with only qualified dieticians and nutritionists.

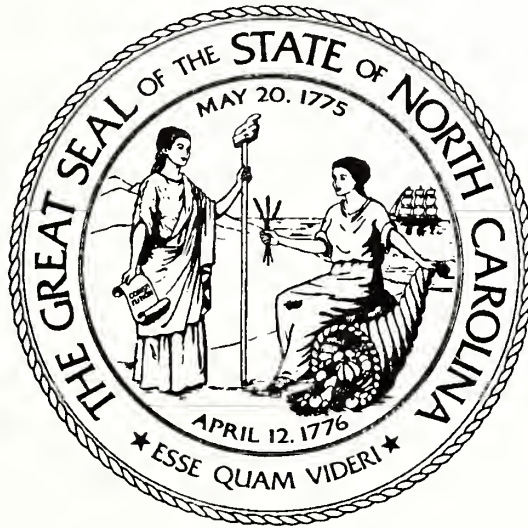
However, two of the most vulnerable special needs populations -- the elderly and adolescents -- are largely unprotected by the institutional safeguards found in schools and many hospitals. North Carolina's attraction as a retirement community is quickly increasing the State's elderly population. Adolescent experiences with anorexia, bulimia, and related disorders and dietary problems also render the adolescent population vulnerable to an unregulated dietetic industry.

Furthermore, hospitals are now encouraging more outpatient treatment of patients, thus leading to the provision of more services by home health care agencies. State institutions such as prisons are also served by food service supervisors who do not have nearly the same training and experience as public school food service supervisors and registered dieticians.

Creation of a licensing board would give the dietetic and nutritional care industry oversight of the profession and legal recourse to remove or exclude incompetent practitioners.

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

ELECTROLYSIS



FINAL ASSESSMENT REPORT (SENATE BILL 937)

JUNE 13, 1989

RECOMMENDATION:

The Legislative Committee on New Licensing Boards recommends that the General Assembly give favorable consideration to the proposal to license electrologists.

FINDINGS:

Electrolysis involves the permanent removal of hair from the face or other parts of the body by the application of an electrical current by a needle. There are approximately 250 individuals practicing electrolysis in North Carolina who would be regulated under Senate Bill 937.

The potential harm that can result from the practice of electrolysis is the transmission of AIDS, hepatitis, or other diseases from unsterilized, contaminated needles and pitting, scarring, or discoloration of the skin from the improper performance of electrolysis. There are also concerns that an improperly-trained or fraudulent practitioner may not effectively remove all the hair desired to be removed. The removal can be a lengthy process, sometimes requiring several visits over the course of a year. The Committee finds that there is potential harm or danger from the practice of electrolysis.

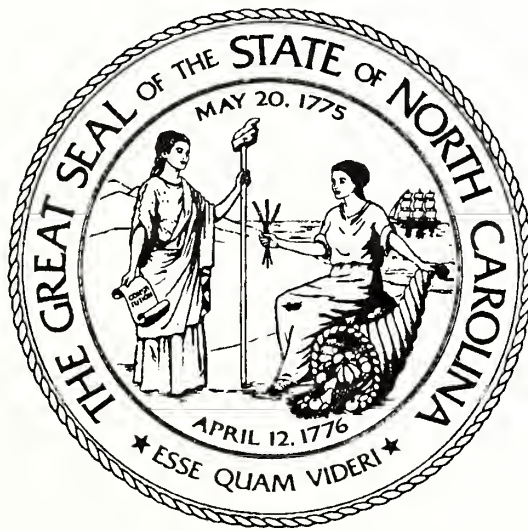
The Committee finds that the practice of electrolysis does involve specialized skills, training and knowledge in order to effectively remove hair from the body. There are currently two professional associations in existence, both of which have established minimum education and training standards for their members.

Although local health directors are authorized to investigate the cause of infectious and contagious diseases and although the Attorney General's Consumer Protection Office and the Federal Trade Commission may investigate and take action against practitioners who defraud electrolysis patients, the Committee finds that such remedies are inadequate to protect patients who are harmed before these agencies take any action. Furthermore, these agencies would not generally become involved except in the most severe cases of unsanitary conditions, fraud, and injury. The threat of substantial and serious bodily injury and the potential transmission of deadly, contagious diseases in the practice of electrology can best be addressed by the creation of a licensing board that will ensure the competency of the individuals involved in the practice of electrology.

The Committee makes no finding as to the economic impact of licensure on the practitioners or the consumers of electrolysis services.

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

ESTHETICIAN



FINAL ASSESSMENT REPORT (HOUSE BILL 686)

JUNE 13, 1989

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27611



June 6, 1989

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Counsel: Linwood Jones
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RECOMMENDATION:

The Legislative Committee on New Licensing Boards recommends that the General Assembly do not give favorable consideration to the proposal to license estheticians.

FINDINGS:

Estheticians perform the following types of cosmetology-related services: skin-care, make-up artistry, facials, and body-waxing. Some even assist dermatologists, plastic surgeons, and other physicians with the care of a patient's skin after cosmetic surgery or dermatological treatment. Under House Bill 686, the Board of Cosmetic Arts Examiners would be the board responsible for administering the licensure program for estheticians. House Bill 686 proposes the completion of a 750-hour curriculum and passage of an examination in order to be licensed as an esthetician.

The primary concerns in the practice of esthetics are unsanitary practices and the use of potentially-dangerous chemicals.

The Committee finds that the practice of esthetics does not possess qualities that distinguish it from ordinary labor, nor does it require the level of specialized skill or training sufficient to justify licensure. The Committee also finds that the public health, safety, and welfare is not threatened by the continued non-licensure of estheticians, and that their health and safety are best protected by existing regulations and laws. Under current law, local health directors are already authorized to investigate the cause of infectious, communicable, and other diseases and to disseminate public health information (G.S. §130A-41). This should provide a sufficient deterrent and check against unsanitary practices and a means by which the public can guard against the continued operation of unsanitary facilities.

Cosmetic products which contain chemicals also potentially threaten the consumer's health, but it is the contents of the chemical itself, as opposed to the use of the chemical, that poses the greatest threat to the consumer. The most appropriate method to ensure the safety of the chemical-containing cosmetics is to require them to be tested. Although the federal Food and Drug Administration does not have authority to mandate testing of chemical cosmetics by the manufacturers, it does provide a voluntary registration program to allow the manufacturers to file cosmetic product ingredient and cosmetic raw material composition statements, and provides a specific registration category for skin care products (7 C.F.R. §720). There are indications that most manufacturers comply with the voluntary registration program.

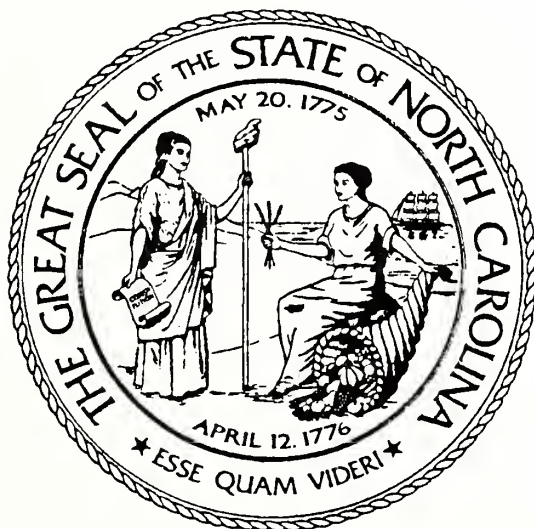
The Committee believes that a licensing board is not capable of testing these chemicals to ensure that they are safe in the cosmetics in which they are used. The most appropriate method of addressing concerns about chemicals in cosmetics would be to seek federal legislation amending the authority of the federal Food and Drug Administration to require registration as it now does for drugs and as the Environmental Protection Agency now does for pesticidal chemicals.

The Committee also finds that the public is capable of evaluating the competency of estheticians, and that the marketplace itself can adequately regulate the profession. The Committee makes no determination whether licensure would increase costs to the consumer, although the Committee does note that ¹⁰ a new licensing board would be created by the bill.

LCONLB-27A

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

FIRE SPRINKLER CONTRACTORS



FINAL ASSESSMENT REPORT (HOUSE BILL 1299) (SENATE BILL 896)

JUNE 6, 1989

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27611



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RECOMMENDATION:

The Committee on New Licensing Boards recommends that the General Assembly give favorable consideration to legislation proposing to license fire sprinkler contractors.

FINDINGS AND CONCLUSIONS:

(1) The unregulated practice of fire protection contractors will substantially harm or endanger the public health, safety, or welfare.

Fire sprinkler contractors install, inspect, service, and repair fire sprinkler systems. Systems that are improperly installed can threaten both property and human life because of water leakage or failure to function during a fire.

The Committee was provided with numerous local examples of defective installations of and substandard workmanship on fire sprinklers. In addition, the Committee was provided with many examples of actual death, injuries, and property damage from faulty fire sprinkler installations in other states which did not at the time require the licensure of fire sprinkler contractors.

In its 1987 report, the Committee felt that inspections of the installed fire sprinkler systems by the contractors, insurance companies, and local building inspectors would be sufficient to detect and remedy major problems before damage occurred. The Committee has been presented with evidence, however, that most local building inspectors lack the training necessary to properly test fire sprinkler systems, that insurance companies do not routinely inspect fire sprinkler systems, and that leak-testing by a contractor or anyone else will not necessarily reveal defective workmanship.

(2) The practice of fire sprinkler contracting possesses qualities that distinguish it from ordinary labor.

A fire sprinkler contractor must be knowledgeable on a number of technical matters, including knowledge of the National Fire Protection Association Codes, application of hydraulic calculations, and water supply and pressure. The fire sprinkler contractor must also be able to interpret the National Fire Protection Association code and standards during installation of the system and be able to prepare lay out and coordination drawings.

Also, the U.S. Department of Labor recognizes sprinkler-fitters as a specialty of the pipe trades.

(3) The practice of fire sprinkler contracting requires specialized skill and training.

The level of training, skill, and knowledge required to competently install fire sprinkler systems appears to be greater than the level required for other ordinary, unlicensed professions. See the statements under finding #2 above.

(4) A substantial majority of the public do not have sufficient knowledge or experience to evaluate the competence of fire sprinkler contractors.

Although developers, builders, and others involved in commercial and institutional construction may be capable of evaluating the competency of fire sprinkler contractors, the general public that frequents sprinklered buildings has no method of determining whether a building's fire protection system was installed by a competent, experienced contractor. The general public can rely on the State Building Code as to the standard of safety that must be provided by a fire protection system but has no assurances that the standard has been met by the contractor who installed the system.

(5) The Committee makes no determination whether licensure of fire sprinkler contractors would have a substantial adverse economic impact upon consumers of their services.

(6) The public cannot be effectively protected by other means.

Automatic sprinklers are required by statute and/or by Building Code regulation in certain types of structures (N.C. Gen. Stat. §69-29; State Bldg. Code, §901.7). The North Carolina State Building Code provides that the installation of automatic sprinklers must be reasonably safe to persons and property (§901.8). Only approved sprinklers and devices may be used in

automatic sprinkler systems and the complete layout of the system must be submitted to the building inspector for approval before installation (§901.1).

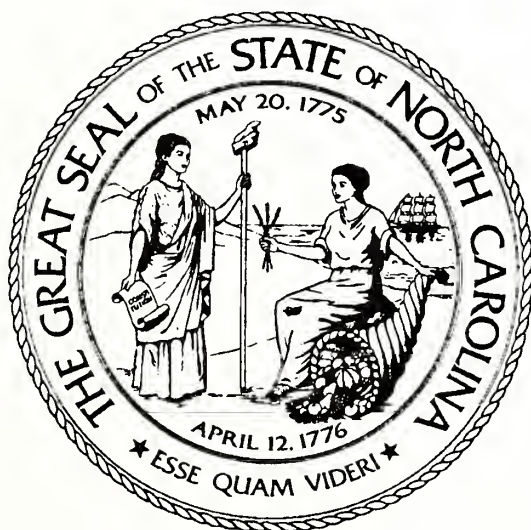
The local building inspectors responsible for inspecting the installation of automatic sprinklers are required by law to be qualified for their work and must be certified by the North Carolina Code Officials Qualification Board. The certification sets forth the performance level (for example, certain types and sizes of structures) for which the inspector is qualified. (N.C. Gen. Stat. §143-151.13, §153A-351.1, §160A-411.1).

However, testimony before the Committee indicates that local building inspectors do not possess the degree of training and knowledge about NFPA codes and standards sufficient to ensure that a system has been properly installed. No training or certification in fire sprinkler inspection is offered by the Code Officials Qualification Board. In addition, leak-testing of the system does not necessarily reveal potentially dangerous defects. The licensure of fire sprinkler contractors is necessary to protect the public from the potentially dangerous consequences of an improperly-installed fire sprinkler system.

LCONLB-22

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

MASONRY CONTRACTORS



FINAL ASSESSMENT REPORT (SENATE BILL 969)

JUNE 13, 1989

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS
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RALEIGH, NC 27611



June 6, 1989

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RECOMMENDATION:

The Legislative Committee on New Licensing Boards recommends that the General Assembly do not give favorable consideration to legislation proposing the licensure of masonry contractors.

FINDINGS:

There are an estimated 600 masonry contractors in the State of North Carolina. A masonry contractor is one who engages in the business of performing construction or repair work involving the use of brick, stone, concrete masonry units, glass block, grout fill, and similar materials. Senate Bill 969 would require the licensure only of masonry contractors, not journeymen or apprentice masons.

Under Senate Bill 969, two classes of masonry licenses (Class I and Class II) would be issued. Class I licenses are further divided into limited, intermediate, and unlimited licenses. A Class I limited license would permit masonry work of up to \$100,000 on commercial projects. A Class I intermediate license would permit masonry work of up to \$250,000 on commercial projects. A Class I unlimited license would permit masonry work on any project without regard to the value of the work to be performed. A Class II license would be available for a person involved only in residential projects.

All applicants for licensure, regardless of class, must complete an apprenticeship period and pass an exam. In addition, the proposed State Board of Examiners in Masonry Contracting would appear to be authorized under proposed G.S. 87-123 to impose additional experience and ability requirements beyond the apprenticeship training on Class I intermediate and unlimited licenses. Proposed G.S. 87-123 would also require a Class I intermediate licensee to maintain a working capital of \$25,000 and a Class I unlimited licensee to maintain a working capital of \$35,000.

All applicants must also provide evidence that there are no IRS or N.C. Department of Revenue tax liens filed against them. Although Senate Bill 969 does not specify the length of the required apprenticeship period, the Committee has been provided with a proposed apprenticeship agreement between the North Carolina Mason Contractors Association and the North Carolina Department of Labor that indicates the term of apprenticeship could consist of 6,000 hours of on-the-job training and 216 hours of related classroom instruction.

The Committee finds that the practice of masonry contracting does not possess qualities that distinguish it from ordinary labor nor does it require specialized skill or training, even though training is currently available through apprenticeship programs and vocational educational courses.

The Committee also finds that the unregulated practice of masonry contracting will not substantially harm or endanger the public and that the majority of the users of masonry contracting services are capable of evaluating the competence of the contractors. Although the Committee recognizes the potential of property damage and personal injury and even death from collapsing walls, chimney fires, and related events attributable to faulty masonry work, there is little evidence that such events have become a widespread problem warranting licensure.

The Committee also finds that, in spite of the proposed grandfather clause, the licensing of masonry contractors may effectively prevent many small contractors from engaging in the business. The potentially lengthy apprenticeship period and the financial responsibility requirements would be particularly burdensome to small masonry contracting businesses.

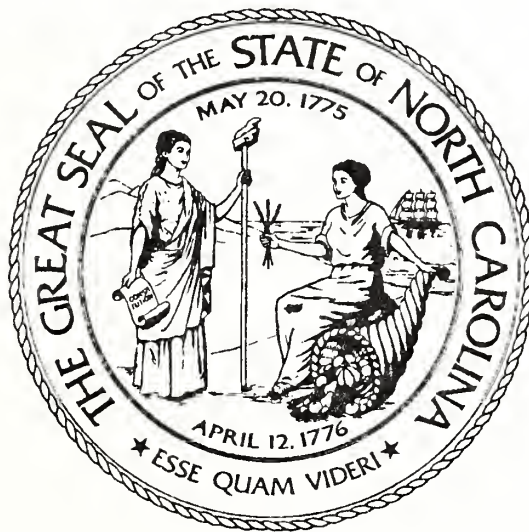
The Committee also finds that the public can be adequately protected by other means. The North Carolina State Building Code requires all masonry construction to conform to the Code. The Building Code regulates the quality of masonry materials used, wall thickness, lateral support, anchorage, bonding, and related facets of masonry construction (State Building Code, Vol. I, Ch. 14, §1401 - §1414). The Code also specifies fire resistance standards for construction materials, including masonry materials, used in buildings (Code, Vol. I, Ch. 25, §2501.1 et seq.). The Code also regulates the construction of masonry chimneys (Code, Vol. I, Ch. 27). The State Building Code is enforced by local building inspectors.

The Committee finds that the protections afforded by the State Building Code, and the enforcement of the Code by local building inspectors is sufficient to adequately protect the public, and that licensure is not necessary.

LCONLB-26A

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

NAIL SCULPTORS



FINAL ASSESSMENT REPORT (HOUSE BILL 687)

JUNE 13, 1989

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27611



June 6, 1989

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Senator Marc Basnight
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Senator Marshall Rauch

Clerk: Margaret Wallace
(919) 733-5824

Counsel: Linwood Jones
(919) 733-2578

Additional copies of this report may be obtained from the Legislative Library after June 19, 1989.

RECOMMENDATION:

The Committee on New Licensing Boards recommends that the General Assembly do not consider legislation proposing to license non-shop manicurists and nail sculptors, and that the General Assembly do give favorable consideration to a proposal to provide for the voluntary registration of non-shop manicurists and nail sculptors who wish to use the title "registered" manicurist or "licensed" manicurist.

FINDINGS AND CONCLUSIONS:

The practice of nail sculpting is a relatively new technology that involves the application of an acrylic base to a person's nails, followed by the shaping of the nails to repair them, make them longer, etc. Manicuring is a different type of nail treatment that involves filing, cleaning, and polishing of nails and does not involve the artificial construction of nails through the use of an acrylic base.

N.C. Gen. Stat. §88-30 currently provides in part as follows:

"A person shall be a registered manicurist to engage in the practice of manicuring or pedicuring in a cosmetic art shop, beauty parlor or hairdressing establishment and that person may be a registered manicurist without being a registered cosmetologist."

Although there is other statutory language (N.C. Gen. Stat. §80-1, §80-2) that appears to give the Board of Cosmetic Arts power to regulate manicurists practicing outside of beauty shops, it is generally understood that N.C. Gen. Stat. §80-30 (along with N.C. Gen. Stat. §80-22(6)) is controlling. Therefore, the Board lacks the authority to regulate manicurists practicing outside of beauty shops. House Bill 687 would give the Board this authority.

There has been no showing of a need to require the licensure of nail sculptors and manicurists practicing outside of beauty shops. The imposition of licensing in 1963 for manicurists working in beauty shops appears to have been a mere incidence to the licensing and sanitary inspection of beauty shops. Concerns about the spread of germs and contagious diseases at unlicensed and uninspected nail salons are legitimate, but there have not been extensive complaints about sanitary conditions at these facilities to justify mandatory licensing of persons providing these services and mandatory inspection of their shops. The Committee makes no findings concerning the appropriateness of licensed manicurists in cosmetic arts shops since the Committee has no jurisdiction over existing licensed professions.

Final Report
Nail Sculptors/Manicurists
Page Two

The Committee finds that the public may be best protected by a voluntary registration system, under which a manicurist or nail sculptor not required to be licensed would become licensed only if he or she wished to designate himself or herself to be a "licensed" or "registered" manicurist. An individual who wants to engage in manicuring or nail sculpting outside of a cosmetic art shop could do so without becoming licensed as long as he or she does not refer to or advertise himself or herself as a licensed or registered manicurist or use any other words that are intended to convey the impression that he or she has in fact been licensed by the Board of Cosmetic Arts. This would enable the public to more effectively evaluate the skills, training, and experience of manicurists and nail sculptors working outside beauty shops.

The text of the proposal recommended by the Committee (under its authority to suggest alternative regulatory measures pursuant to G.S. 120-149.4(e)), is attached to this report in the form of a proposed committee substitute.

LCONLB-23A

DRAFT
FOR REVIEW ONLY

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1989

H

1

HOUSE BILL 687
PROPOSED COMMITTEE SUBSTITUTE
PCS-H687RN1

Short Title: Manicurist License Changes.

(Public)

Sponsors:

Referred to: Commerce.

March 20, 1989

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE NUMBER OF HOURS REQUIRED FOR A
MANICURIST LICENSE AND TO PROVIDE FOR VOLUNTARY
REGISTRATION OF NON-SHOP MANICURISTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 88-8 reads as rewritten:

"§ 88-8. Manicurist.

'Manicurist' means any person who ~~does manicuring or pedicuring and who~~
~~makes a charge for such service.~~ provides manicuring or pedicuring services for
compensation. Manicuring or pedicuring services include trimming, filing,
sculpturing, shaping, and decorating fingernails or toenails and applying
sculptured or other artificial fingernails or toenails, but these services shall not
include the treatment of pathological conditions."

Sec. 2. G.S. 88-28 reads as rewritten:

"§ 88-28. Acts made misdemeanors.

Each of the following constitutes a misdemeanor punishable upon conviction
by a fine of not less than twenty-five dollars (\$25.00) and not more than one
hundred dollars (\$100.00), or up to 30 days in jail, or both:

- 1 (1) The violation of any of the provisions of ~~G.S. 88-1~~ G.S.
2 88-1, G.S. 88-30(b), or G.S. 88-30(c).
- 3 (2) Permitting any person in one's employ, supervision, or
4 control to practice as an apprentice unless that person has a
5 certificate of registration as a registered apprentice.
- 6 (3) Permitting any person in one's employ, supervision, or
7 control, to practice as a cosmetologist unless that person has a
8 certificate as a registered cosmetologist.
- 9 (4) Obtaining, or attempting to obtain, a certificate of registration
10 for money other than the required fee or any other thing of
11 value, or by fraudulent misrepresentations.
- 12 (5) Practicing or attempting to practice by fraudulent
13 misrepresentations.
- 14 (6) The willful failure to display a certificate of registration as
15 required by G.S. 88-24.
- 16 (7) The willful violation of the reasonable rules and regulations
17 adopted by the State Board of Cosmetic Art Examiners."

18 Sec. 3. G.S. 88-30 reads as rewritten:

19 "**§ 88-30. Registered manicurist.**

20 ~~A person shall be a registered manicurist to engage in the practice of~~
21 ~~manicuring or pedicuring in a cosmetic art shop, beauty parlor or hairdressing~~
22 ~~establishment and that person may be a registered manicurist without being a~~
23 ~~registered cosmetologist.~~ (a) A certificate of registration as a registered
24 manicurist shall be issued by the Board of Cosmetic Art Examiners to any
25 person who meets the following qualifications:

- 26 (1) Who has completed ~~150~~ 300 hours in classes in a cosmetic art
27 school or college approved by the Board; and
- 28 (2) Repealed by Session Laws 1981, c. 615, s. 19.
- 29 (3) Repealed by Session Laws 1973, c. 450, s. 4.
- 30 (4) Who has passed a satisfactory examination, conducted by the
31 Board, to determine his or her fitness to ~~practice manicuring,~~
32 provide manicuring and pedicuring services, such examination
33 to be so prepared and conducted as to determine whether ~~or~~
34 ~~not~~ the applicant is possessed of the requisite skill ~~in such~~

1 ~~trade~~ to properly perform all the duties thereof and services
2 incident thereto.

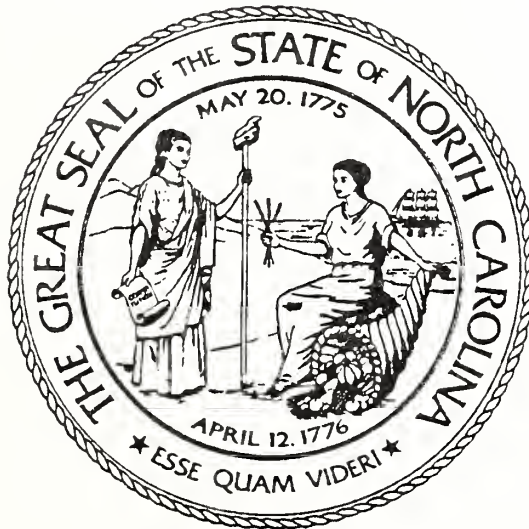
3 **(b) No person who is not properly licensed by the Board as a registered**
4 **apprentice cosmetologist, a registered cosmetologist, or a registered manicurist**
5 **may provide for compensation in a cosmetic art shop, beauty shop or**
6 **hairdressing establishment any manicuring or pedicuring services on hands,**
7 **fingernails, feet, or toenails.**

8 **(c) Any person not licensed pursuant to the provisions of subsection (b) of**
9 **this section who provides for compensation any manicuring or pedicuring**
10 **services on hands, fingernails, feet, or toenails shall not use the words**
11 **'registered' or 'licensed' or any derivation thereof in connection with the word**
12 **'manicurist,' or other words and/or initials tending to convey the impression**
13 **that he is licensed by the Board as a registered manicurist without having first**
14 **been licensed by the Board pursuant to this Chapter."**

15 Sec. 4. This act shall become effective October 1, 1989, except
16 that any applicant for registration as a registered manicurist who applies on or
17 before December 31, 1989, shall be required to have completed no more than
18 150 hours in classes in a cosmetic arts school or college approved by the
19 Board.

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

RADIOLOGIC TECHNOLOGY



FINAL ASSESSMENT REPORT (HOUSE BILL 1070)

JUNE 6, 1989

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27611



June 6, 1989

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Counsel: Linwood Jones
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RECOMMENDATION

The Committee on New Licensing Boards recommends that the General Assembly favorably consider legislation proposing to require the licensing of radiologic technologists.

FINDINGS AND CONCLUSIONS:

(1) The unregulated practice of radiologic technology will substantially harm or endanger the public health, safety or welfare and the potential for such harm is recognizable.

Approximately two out of every three persons receive x-ray examinations each year. Although the Committee makes no finding as to the accuracy of reports that ionizing radiation causes biological damage to patients, it does recognize that the use of radiation for treatment and diagnosis of diseases may produce potentially harmful side effects for the exposed patient.

the Bureau of Radiologic Health of the United States Department of Health, Education and Welfare estimates that nearly 30 percent of our population is exposed to x-rays that are unproductive and contribute nothing to patient diagnosis. Untrained, inexperienced or incompetent operators of x-ray equipment may overexpose a patient to unnecessary radiation or produce an x-ray whose poor quality leads to a misdiagnosis by the attending physician. Such operator errors could be minimized by a licensing plan that would require sufficient education and an examination to ensure the competency of each operator.

A physician's oversight of x-ray examinations is generally limited to ordering the examination and does not extend to overseeing the actual operation of the x-ray equipment by the operator. In addition, only one-third of the estimated number of x-ray equipment operators have met the educational requirements for voluntary certification by the American Registry of Radiologic Technologists.

(2) The practice of radiologic technology possesses qualities that distinguish it from ordinary labor.

The use of radiation for treatment and diagnosis of diseases may produce harmful side effects to patients exposed to radiation. The adoption of regulations by the North Carolina Radiation Protection Commission, pursuant to statute, evidences North Carolina's recognition that the use of radiation in the medical profession may subject patients to adverse risks not common to other professions that deal with the public.

(3) The practice of radiologic technology requires specialized skill and training.

As stated in the report from the North Carolina Society of Radiologic Technologists, "the performance of even the most basic, routine x-ray studies require essential knowledge and understanding of the safe operation of x-ray equipment, selection of exposure factors, selection of ancillary equipment (image recording systems), radiation beam adjustment and collimation, proper positioning of patients, and many other factors in order to produce an optimum diagnostic examination. Operator errors in any part of the imaging process result in poor quality studies, frequently requiring repeat examinations, which contributes unnecessarily to the patients' radiation exposure and exacerbates the cost of health care services."

(4) A substantial majority of the public do not have sufficient knowledge or experience to evaluate the competence of radiologic technologists.

Most patients undergoing an x-ray examination or radiation treatment assume the individual administering the radiation is well-trained in the use and operation of x-ray equipment and the proper administration of radiation. However, there are no minimum qualifications of education, training or experience for x-ray equipment operators, except for those who seek the voluntary certification offered by the American Registry of Radiologic Technologists. In most instances, a patient does not question the competency of an operator of x-ray equipment since the patient relies on his physician (or other practitioner), who orders the examination; however, the practitioner ordering the examination does not normally conduct the x-ray examination.

(5) The Committee makes no determination as to the economic impact of licensing.

(6) The Committee concludes that the public cannot be effectively protected by other means.

There is some regulatory control over the use of radiation for medical application. The North Carolina Radiation Protection Act, Chapter 104E of the General Statutes, provides that the North Carolina Radiation Protection Commission may adopt rules governing the use of radiation machines. Pursuant to its statutory authority, the Commission requires that all x-ray machines be registered and that all x-ray examinations be ordered by a licensed practitioner. However, Chapter 104E explicitly states that the Radiation Protection Act does not require "the licensing of individual natural persons involved in the use of radiation machines or radioactive materials for medical diagnosis or treatment." (G.S. 104E-5(17)). The Committee concludes that

the Radiation Protection Act does not sufficiently address the potential problems that may be attributed to operator error or negligence.

Although the American Registry of Radiologic Technologists offers certification for those technologists who meet the educational requirements of the program, the certification is voluntary and only one-third of the active x-ray equipment operators are certified.

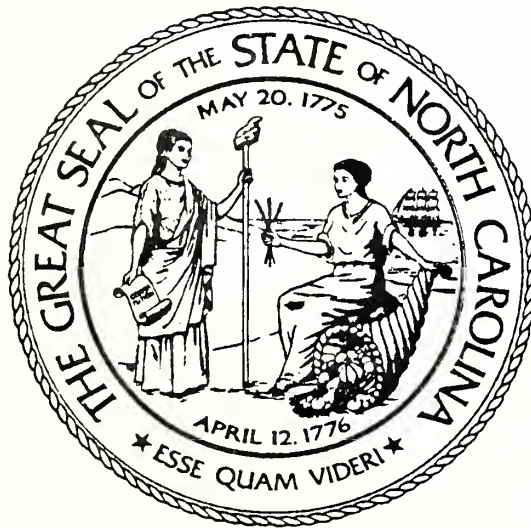
The Committee recognizes that licensing of radiologic technologists may lead to increased costs for practitioners who are presently using nurses and other individuals not as extensively trained as radiologic technologists for the operation of x-ray equipment. However, the Committee believes that the possible dangers presented by inexperienced and untrained operators and the costs, both economical and biological, of repeated examinations due to operator error offset the potential increased costs to practitioners.

The Committee also notes the report of the Legislative Research Commission on New Health Occupational Licensing Boards, which recommended that the General Assembly favorably consider legislation to license radiologic technologists.

LCONLB-24

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

REAL ESTATE APPRAISERS



FINAL ASSESSMENT REPORT (HOUSE BILL 492 – PCS)

JUNE 6, 1989

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27611



June 6, 1989

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RECOMMENDATION:

The Legislative Committee on New Licensing Boards recommends that the General Assembly give favorable consideration to legislation (Committee Substitute to HB 492) allowing for voluntary certification of real estate appraisers.

NOTE:

As originally introduced, House Bill 492 would have required persons engaging in real estate appraisal to be licensed as real estate brokers or real estate salesmen and would have provided an additional tier of voluntary certification. Prior to the appointment of the Legislative Committee on New Licensing Boards, House Bill 492 was amended (by Committee Substitute) by deleting the mandatory licensure requirement and substituting a voluntary licensure provision. Voluntary licensure and voluntary certification programs are not within the jurisdiction of the Legislative Committee on New Licensing Boards. However, since the original bill was a mandatory licensure bill and was therefore within the Committee's jurisdiction (and technically could not be amended without receiving an assessment report from the Committee), the bill sponsor has submitted the bill to the Committee for review.

FINDINGS:

The Committee's findings are limited to the proposal to provide for voluntary certification of real estate appraisers. In the event that the mandatory licensure provision is restored to House Bill 492, a supplementary report pursuant to G.S. 120-149.3(e) may be requested by the appropriate committee chairman, the Speaker, the President Pro Tempore, or the bill sponsor.

Incompetence and fraud in real estate appraisals may harm both individual and institutional consumers of real estate appraisal services. It is the real estate appraiser who establishes the value of the property used as collateral for a loan or investment. Overvalued collateral may lead purchasers to pay more than the market value for the appraised property and may leave a lending institution grossly undersecured on loans made in reliance on the appraisal. In fact, recent testimony before Congress revealed that fraudulent and incompetently-performed appraisals have directly contributed to the insolvency of hundreds of financial institutions nationwide and have contributed to the loss of billions of dollars to mortgage lenders, private mortgage insurers, investors in mortgage-backed securities, and to several federal agencies, especially those that administer the Federal Deposit Insurance funds and mortgage guarantee programs.

In light of the seriousness of faulty real estate appraisals and their adverse effect on the lending and thrift institutions, the federal government has recently taken action that will impact on the practice of real estate appraising. In November, 1988, the federal Office of Management and Budget issued a circular requiring the use of state-regulated real estate appraisers for certain VA, FHA and other loans after July 1, 1991. In addition, Congress, believing that the lack of State regulation of real estate appraisers is a primary cause of faulty and fraudulent appraisals, appears to be on the verge of enacting legislation requiring the use of "state-licensed" or "state-certified" appraisers for all appraisals in federally-related transactions, as generally determined by the Federal Interagency Appraisal Council. The North Carolina Real Estate Commission estimates that this requirement would cover 87 percent of the appraisal work performed in North Carolina.

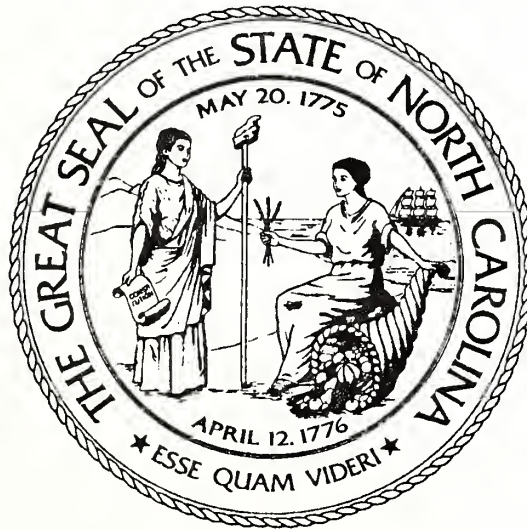
Appraising real estate requires special knowledge of appraisal principles and practices including a thorough understanding of property ownership and interests, land use controls, property descriptions, real estate transactions, lending practices, basic housing construction, and related factors. There are approximately 30 appraisal trade organizations now in existence, many of which confer appraisal designations on their members without regard to their competency. The public is therefore unable to determine qualified, competent appraisers without a licensing or certification board that will ensure such competency.

In light of the findings that the public would be better served by a certification board that will allow competent, trained professional appraisers to distinguish themselves through voluntary credentialing, and in light of the fact that pending federal legislation will require a State certification program for persons engaging in nearly ninety percent of the real estate appraisal transactions in North Carolina, the Committee recommends that the General Assembly favorably consider the committee substitute to House Bill 492.

LCONLB-25

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

RESPIRATORY THERAPY



FINAL ASSESSMENT REPORT (HOUSE BILL 528)

JUNE 13, 1989

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27611



June 6, 1989

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RECOMMENDATION:

The Committee on New Licensing Boards recommends that the General Assembly do not give favorable consideration to legislation proposing the licensing of respiratory care therapists, but that it consider creating a study committee to examine the issue of creating an "umbrella" licensing board with jurisdiction over several of the health allied professions, including respiratory therapy.

FINDINGS:

Respiratory care therapy involves the treatment, management, diagnostic testing, control and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system. The skills required of a respiratory care therapist include, among other skills, the administration of medical gases, breathing treatments, delivery or pharmacological agents, use of life support equipment, cardiopulmonary resuscitation, insertion of artificial airways, arterial blood sampling, pulmonary function testing, and heart function measurements. However, under the proposed licensure plan, the respiratory care therapist must be acting "in accordance with the written or verbal order of a licensed physician" (HB 528, proposed G.S. 90-352(2)).

There are nearly 1,900 persons practicing respiratory care in North Carolina. Nearly three-fourths of these practitioners have received formal training and have voluntarily been certified by the National Board for Respiratory Care.

Some hospitals and home health care agencies require certified respiratory therapists and some do not. The Committee has no knowledge of how many of the health care providers require certification and how many do not. There are nearly 13,000 home health care patients who receive home respiratory care. State law provides generally for the supervision of home health care workers, including respiratory care therapists, and requires these workers to be assigned only to duties for which they are properly trained.

The Committee questions whether the skills and training required of respiratory therapists differ from ordinary labor significantly enough to justify licensure. The Committee notes in particular that the required training for licensure as proposed in House Bill 528 is a high school education (or equivalent) and an unspecified curriculum in a respiratory care school to be approved by the proposed Board. The level of training and knowledge required to practice respiratory care may not be great enough to mandate licensure of the profession.

The Committee also finds that the primary users of respiratory care services -- hospitals and home health care agencies -- are knowledgeable enough to evaluate the competency of respiratory care therapists.

The Committee makes no determination whether licensure would have an adverse economic impact on users of respiratory care services. There was mixed testimony before the Committee on this issue, some indicating that the use of respiratory therapists resulted in lower costs than the use of unlicensed personnel and conflicting testimony indicating that licensure would increase the costs of health care by providers, which in turn would be passed on to patients.

The Committee does find that the public can be effectively protected by other means. The current voluntary certification process seems to have attracted nearly three-fourths of the persons practicing in respiratory care, and the Committee believes that the major users of respiratory care services -- hospitals and home health care agencies -- can rely on the voluntary certification process in hiring respiratory care therapists. The use of the voluntary national credentialing program allows the marketplace to regulate the profession and the use of respiratory care services.

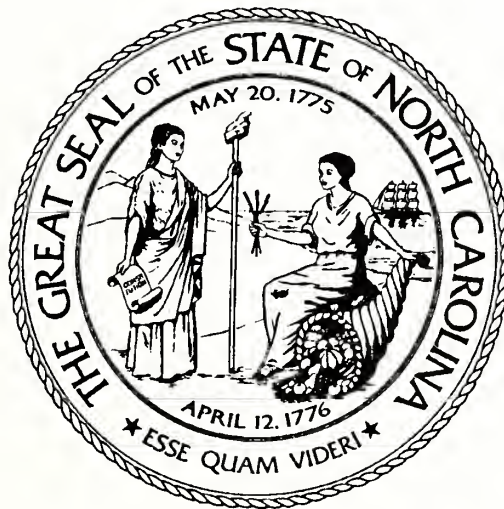
Although the home health care setting does not provide the same direct physician oversight as in the hospital setting, the law does require that persons working for home health care agencies, including respiratory therapists, be under the supervision of either a licensed physician or a registered nurse in providing services in accordance with the orders of the physician responsible for the care of the patient and under a plan of treatment established by such physician (10 N.C.A.C. 3L.0205(c)). The law also requires that persons who work for home health care agencies be assigned only to those duties for which they are trained and competent to perform (10 N.C.A.C. 3L.0207(c)).

The committee is unable to recommend a favorable assessment report for House Bill 528 at this time. However, the Committee does recommend that the General Assembly consider creating a study committee to examine the feasibility of creating an "umbrella" licensing board with jurisdiction over several of the health-allied fields, including respiratory therapy.

LCONLB-20A

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

ACUPUNCTURE



PRELIMINARY ASSESSMENT REPORT (HOUSE BILL 1209)

JUNE 7, 1989

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27611**



June 8, 1989

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Representative William Hurley
Representative Barney Paul Woodard

Senator Marc Basnight
Senator Howard Bryan
Senator David Parnell
Senator Marshall Rauch

Clerk: Margaret Wallace
(919) 733-5824

Counsel: Linwood Jones
(919) 733-2578

Additional copies of this report may be obtained from the Legislative Library after June 14, 1989.

RECOMMENDATION:

The Legislative Committee on New Licensing Boards recommends that the General Assembly do not give favorable consideration to the proposal to license acupuncturists.

FINDINGS:

Acupuncture is a branch of traditional Chinese medicine, involving primarily the insertion and manipulation of needles at specific points on or near the surface of the skin. Although the exact number of practitioners of acupuncture in North Carolina is unknown, there are in fact very few (estimates range from 8 to 15 individual practitioners who are non-physicians). There are also some physicians who practice acupuncture.

The most prominent dangers of acupuncture are the puncture of body organs with needles, the transmission of hepatitis and other diseases by the needles, and the commission of fraud by a person who renders "services" that provide no real benefit to the patient.

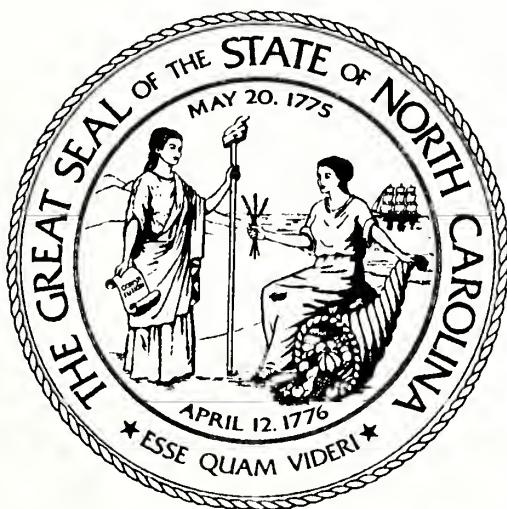
The Committee finds that the practice of acupuncture does require specialized skill and training and differs from ordinary labor in the amount of skill and knowledge required to perform acupunctural techniques. Voluntarily-certified acupuncturists currently complete up to three years of specialized academic training.

The Committee also finds that the public may not be capable of evaluating the competency of practicing acupuncturists and may be confused whether acupuncturists possess the same kind and degree of training that a licensed physician in this State possesses. However, the Committee is unable to recommend favorable consideration of House Bill 1209 at this time for two reasons. First, the Committee is concerned whether the proposed Acupuncturist Licensing Board can remain financially self-sustaining through license renewal fees, examination fees, and related fees on a long-term basis since there are very few practitioners in the State. Second, the Committee feels that a more in-depth study of the relationship of the practice of acupuncture to the practice of medicine is needed before the Committee can determine whether acupuncture should be regulated by an independent board such as that proposed in House Bill 1209.

For the reasons given above, the Legislative Committee on New Licensing Boards recommends that the General Assembly do not give favorable consideration to House Bill 1209.

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

CREMATORY OPERATORS



PRELIMINARY ASSESSMENT REPORT (HOUSE BILL 1307)

JUNE 7, 1989

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27611



June 8, 1989

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RECOMMENDATION:

The Legislative Committee on New Licensing Boards recommends that the General Assembly do not give favorable consideration to the proposal to license crematory operators.

FINDINGS:

There are approximately 23 crematoriums currently in operation in North Carolina. Under House Bill 1307, the term "crematory" includes both the cremation chamber where the cremation actually takes place and the holding facility that is used for retention of bodies prior to cremation.

House Bill 1307 proposes a unique method of administrative regulation over crematory operators by establishing a Crematory Authority as an independent agency under the existing Board of Mortuary Science. The Board of Mortuary Science currently licenses funeral service directors and embalmers and regulates funeral practices but lacks jurisdiction over crematory operators.

The potential harm attributable to negligent crematory operators and their cremation practices include the commingling of remains of more than one body, improper disposal of remains, improper storage of bodies awaiting cremation, failure to pulverize the bones and bone fragments remaining after the cremation process, and early cremation that destroys evidence needed by law enforcement officers.

House Bill 1307 is before the Committee for review because of the provision in proposed G.S. §90-210.43(d) that allows the Crematory Authority to establish standards which the manager must meet. Unlike most licensing board proposals, House Bill 1307 does not specify what standards a crematory operator would have to meet in order to be licensed. It is the Committee's understanding, however, that these standards would not be educational, experience, or examination standards as required by most licensing boards, including the Board of Mortuary Science. The standards would instead relate to professional misconduct in the operation of a crematory, as reflected in the list of offenses for which a crematory operator's license could be revoked under proposed G.S. §90-210.43(l).

**Preliminary Report
Crematory Operators
Page Two**

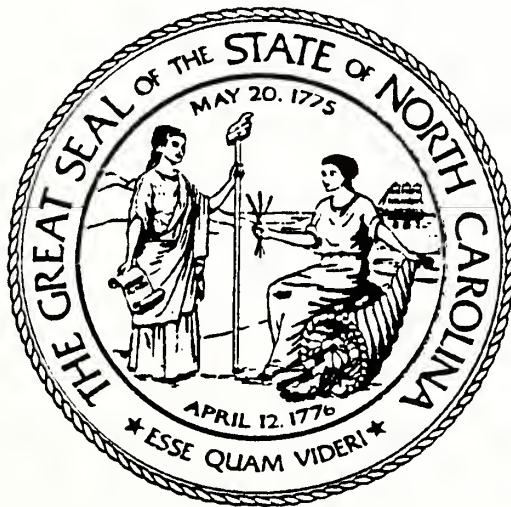
The Committee is unable to recommend favorable consideration of the creation of an independent Crematory Authority under the Board of Mortuary Science. First, with the limited number of crematory operators in the State, the Committee is concerned whether the Authority would be able to generate sufficient funds from its licensees to defray the costs of administration that would be borne by the Crematory Authority and the Board of Mortuary Science in enforcing the act. Second, the Committee finds that the creation of an independent board (the Crematory Authority) within a board that already functions as an autonomous licensing board (Board of Mortuary Science) is unusual and merits more scrutiny, especially since the policy-making powers appear to reside with one board and the enforcement powers appear to reside with the other (see proposed G.S. §90-210.42(a)).

The Committee is also unable to recommend favorable consideration of the proposal to establish "standards" for crematory operators if these standards will require specified education, experience, or examinations. The Committee makes no finding as to the remaining provisions of the bill involving the regulation of crematory facilities and their operation. If the General Assembly or one of its committees wishes to pursue this legislation (HB 1307), the Committee recommends that the provision on "standards" to be established by the Authority either be removed from the bill or that it be clarified to clearly state that no educational, experience, or examination standards will be imposed as a prerequisite to licensure. The provisions concerning the licensure and operation of the facility itself are beyond the Committee's jurisdiction, and no finding on their appropriateness is rendered in this report.

LCONLB-29

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

DIETETICS/NUTRITION



PRELIMINARY ASSESSMENT REPORT (SENATE BILL 655) (HOUSE BILL 710)

MAY 31, 1989

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27611



MAY 31, 1989

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Additional copies of this report may be obtained from the Legislative Library after June 7, 1989.

RECOMMENDATION:

The Committee on New Licensing Boards recommends that the General Assembly consider legislation proposing the licensure of dietitians and nutritionists.

FINDINGS AND CONCLUSIONS:

(1) The unregulated practice of dietetics/nutrition will substantially harm or endanger the public health, safety, or welfare.

The practice of dietetics and nutrition care involves nutritional counseling, nutritional needs assessment, and the evaluation, development and maintenance of appropriate standards of quality in food and nutrition services. Nutritional needs assessment includes assessment of diet history and past medical history, food and drug interaction, behavior modification, and related needs assessments. Although the number of consumers using the services of dietitians and nutritionists is unknown, at least 1/2 million consumers are expected to be direct users of these services through hospitals, clinics, child care, prisons, and school food service.

The increased promotion of low-calorie diets, high vitamin and mineral supplements, and expensive food products, some of which are either of little or no nutritional value and some of which may lead to medical problems, poses a threat to the public health, safety, and welfare, especially considering the large number of customers of diet centers and other dietetic services. In addition, there are numerous documented instances in which grossly unqualified practitioners and "self-styled" nutritionists have incompetently rendered advice to their patients, leading to serious medical problems for the patients.

The practice of dietetics and nutritional care involves specialized knowledge and training and has a substantial impact upon the health of patients and customers of dietitians, nutritionists, diet centers, and other dietetic services. The unregulated practice of dietetics and nutritional care will substantially harm or endanger the public health, safety, or welfare.

(2) The practice of dietetics/nutrition possesses qualities that distinguish it from ordinary labor.

The practice of dietetics/nutrition is distinguishable from ordinary labor since knowledge of physiology, anatomy, chemistry, and related medical disciplines, and knowledge about foods, vitamins and minerals, the potencies at which vitamins are most useful and/or toxic, and their application to specific nutritional or dietary needs is required in order to offer sound nutritional or dietetic advice.

(3) The practice of dietetics/nutrition requires specialized skill and training.

Some degree of training beyond that required of ordinary endeavors is required in order to practice dietetics and nutritional care competently. The two bills proposing to require licensure of dietitians require at least a baccalaureate degree with a major course of study in human nutrition, dietetics, or related areas, plus 900 hours of supervised clinical experience and passage of an examination.

(4) A substantial majority of the public do not have sufficient knowledge or experience to evaluate the competence of dietitians and nutritionists.

A substantial majority of the public do not have the knowledge and experience to evaluate the competence of dietitians and nutritionists. There has been a great deal of misplaced reliance on the media by consumers of dietetic and nutrition care services. Use of the telephone book's Yellow Pages does not give the public a true indication of which practitioners are competent since there are currently no restraints on a practitioner's advertising as a dietitian or nutritionist. It has been shown to the Committee that a large number of practitioners are misrepresenting or falsifying their credentials.

(5) The Committee makes no determination whether licensure of dietitians and nutritionists would have a substantial adverse economic impact upon consumers of the dietitians' and nutritionists' services.

(6) The public cannot be effectively protected by other means.

It appears that current regulations and restraints on the provision of dietetic and nutritional care services as well as current health care policies are insufficient to protect the public. There are available to the public existing laws to deal with deceptive and misleading advertising, the unlawful practice of medicine, and the labeling of vitamins and minerals, but they do not appear to be sufficient to protect the public. For example, despite years of effort by the Food and Drug Administration, attempts to limit the potencies, combination, and numbers of vitamins issued to consumers by dietitians, health food stores, etc. have failed; Congress has since prohibited the FDA from placing such limits on vitamins and minerals, except for special populations such as children and pregnant women (21 U.S.C. §350, 1976).

**Preliminary Report
Dietetics/Nutrition
Page Three**

In addition, current health care policies and employment practices of institutions do not protect all segments of the population. Special needs populations such as hospital patients and public school children are to some extent protected by the imposition of minimum qualifications upon nutritionists and dieticians serving those populations. For example, the food service supervisors in North Carolina's public schools are required to have either a Master's Degree and 1 year of food service experience or a Bachelor's Degree and 2 years of food service experience. Nearly all the supervisors have obtained their degrees in food service-related fields. Individual dietetic needs are referred by the supervisors to qualified dieticians for further assessment and action. Many of the State's public and private hospitals also employ or contract with only qualified dieticians and nutritionists.

However, two of the most vulnerable special needs populations -- the elderly and adolescents -- are largely unprotected by the institutional safeguards found in schools and many hospitals. North Carolina's attraction as a retirement community is quickly increasing the State's elderly population. Adolescent experiences with anorexia, bulimia, and related disorders and dietary problems also render the adolescent population vulnerable to an unregulated dietetic industry.

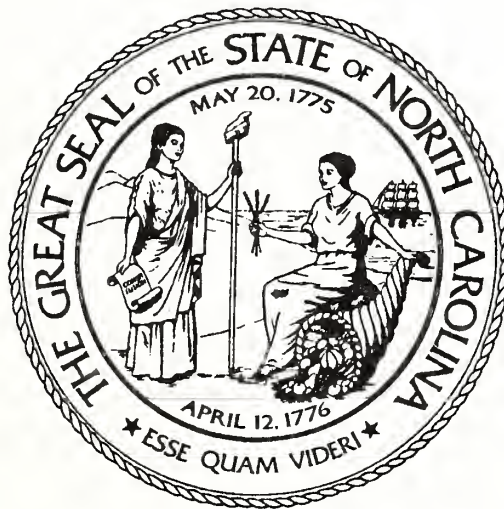
Furthermore, hospitals are now encouraging more outpatient treatment of patients, thus leading to the provision of more services by home health care agencies. State institutions such as prisons are also served by food service supervisors who do not have nearly the same training and experience as public school food service supervisors and registered dieticians.

Creation of a licensing board would give the dietetic and nutritional care industry oversight of the profession and legal recourse to remove or exclude incompetent practitioners.

LCONLB-21

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

ESTHETICIANS



PRELIMINARY ASSESSMENT REPORT (HOUSE BILL 686)

JUNE 6, 1989

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27611



June 8, 1989

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Counsel: Linwood Jones
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Additional copies of this report may be obtained from the Legislative Library after June 14, 1989.

RECOMMENDATION:

The Legislative Committee on New Licensing Boards recommends that the General Assembly do not give favorable consideration to the proposal to license estheticians.

FINDINGS:

Estheticians perform the following types of cosmetology-related services: skin-care, make-up artistry, facials, and body-waxing. Some even assist dermatologists, plastic surgeons, and other physicians with the after-care of a patient's skin. Under House Bill 686, the Board of Cosmetic Arts Examiners would be the board responsible for administering the licensure program for estheticians. House Bill 686 proposes the completion of a 750-hour curriculum and passage of an examination in order to be licensed as an esthetician.

The primary concerns in the practice of esthetics are unsanitary practices and the use of potentially-dangerous chemicals.

The Committee finds that the practice of esthetics does not possess qualities that distinguish it from ordinary labor, nor does it require the level of specialized skill or training sufficient to justify licensure. The Committee also finds that the public health, safety, and welfare is not threatened by the continued non-licensure of estheticians, and that their health and safety are best protected by existing regulations and laws. Under current law, local health directors are already authorized to investigate the cause of infectious, communicable, and other diseases and to disseminate public health information (G.S. §130A-41). This should provide a sufficient deterrent and check against unsanitary practices.

Cosmetic products which contain chemicals also potentially threaten the consumer's health, but it is the contents of the chemical itself, as opposed to the use of the chemical, that poses the greatest threat to the consumer. The most appropriate method to ensure the safety of the chemical-containing cosmetics is to require them to be tested. Although the federal Food and Drug Administration does not have authority to mandate testing of chemical cosmetics by the manufacturers, it does provide a voluntary registration program to allow the manufacturers to file cosmetic product ingredient and cosmetic raw material composition statements, and provides a specific registration category for skin care products (7 C.F.R. §720). There are indications that most manufacturers comply with the voluntary registration program.

**Preliminary Report
Estheticians
Page Two**

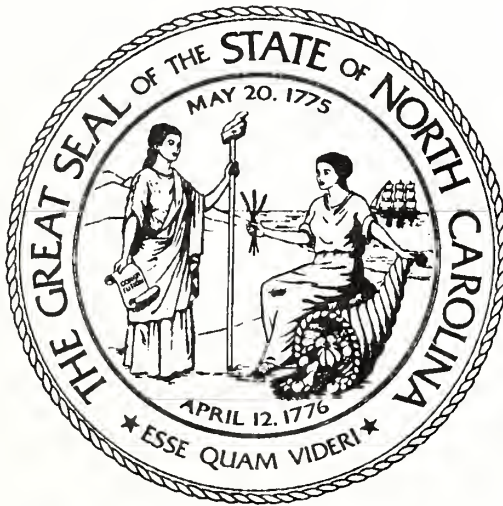
The Committee believes that a licensing board is not capable of testing these chemicals to ensure that they are safe in the cosmetics in which they are used. The most appropriate method of addressing concerns about chemicals in cosmetics would be to seek federal legislation amending the authority of the federal Food and Drug Administration to require registration as it now does for drugs and as the Environmental Protection Agency now does for pesticidal chemicals.

The Committee also finds that the public is capable of evaluating the competency of estheticians, and that the marketplace itself can adequately regulate the profession. The Committee makes no determination whether licensure would increase costs to the consumer, although the Committee does note that new licensing board would be created by the bill.

LCONLB-27

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

ELECTROLYSIS



PRELIMINARY ASSESSMENT REPORT (SENATE BILL 937)

JUNE 7, 1989

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27611**



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RECOMMENDATION:

The Legislative Committee on New Licensing Boards recommends that the General Assembly do not give favorable consideration to the proposal to license electrologists.

FINDINGS:

Electrolysis involves the permanent removal of hair from the face or other parts of the body by the application of an electrical current by a needle. There are approximately 250 individuals practicing electrolysis in North Carolina who would be regulated under Senate Bill 937.

The potential harm that can result from the practice of electrolysis is the transmission of AIDS, hepatitis, or other diseases from unsterilized, contaminated needles and pitting, scarring, or discoloration of the skin from the improper performance of electrolysis. There are also concerns that an improperly-trained or fraudulent practitioner may not effectively remove all the hair desired to be removed. The removal can be a lengthy process, sometimes requiring several visits over the course of a year. The Committee finds that there is potential harm or danger from the practice of electrolysis.

The Committee finds that the practice of electrolysis does involve specialized skills, training and knowledge in order to effectively remove hair from the body. There are currently two professional associations in existence, both of which have established minimum education and training standards for their members.

The Committee finds that the marketplace is sufficiently regulating electrologists and that the public can be effectively protected by means other than licensure of the profession. The majority of the public is knowledgeable enough to consult their dermatologists or other physicians for referrals to electrologists. The Consumer Protection Division of the North Carolina Attorney General's Office and the Federal Trade Commission accept and may investigate complaints of fraud in the profession. In addition, the local health departments are empowered to investigate the cause of infectious, communicable, and other diseases traceable to unsanitary electrolysis practices (G.S. §130A-41(b)(3)).

The Committee makes no finding as to the economic impact of licensure on the practitioners or the consumers of electrolysis services.

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

FIRE SPRINKLER CONTRACTORS



PRELIMINARY ASSESSMENT REPORT (SENATE BILL 896) (HOUSE BILL 1299)

MAY 31, 1989

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27611



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RECOMMENDATION:

The Committee on New Licensing Boards recommends that the General Assembly do not give favorable consideration to legislation proposing to license fire sprinkler contractors.

FINDINGS AND CONCLUSIONS:

(1) The unregulated practice of fire protection contractors will not substantially harm or endanger the public health, safety, or welfare.

Fire sprinkler contractors install, inspect, service, and repair fire sprinkler systems. Systems that are improperly installed can threaten both property and human life because of water leakage or failure to properly function during a fire.

However, requiring the licensure of fire sprinkler contractors is not the most appropriate means of assuring the public that fire sprinkler systems will be properly installed. The danger to building owners from sprinkler leakage and the danger to the building owners, occupants, and visitors from fire could be better addressed by adequate inspection and testing of the fire sprinkler systems prior to occupancy of the building.

There is insufficient evidence that the failure to require licensing of fire sprinkler contractors substantially threatens the public's safety.

(2) The practice of fire sprinkler contracting does not possess qualities that distinguish it from ordinary labor.

Although general contracting and certain specialty contracting (such as electrical, plumbing/heating, and refrigeration) require licensed practitioners, many other areas of contracting do not. Although the U.S. Department of Labor recognizes sprinkler-fitters as a specialty of the pipe trades, there has been no documentation that the installation of sprinkler systems involves qualities that distinguish it from ordinary labor.

(3) The practice of fire sprinkler contracting does not require specialized skill and training.

Although a certain level of training, knowledge, and skill is required to install fire sprinklers, and although businesses specializing in the installation of fire sprinkler systems may have voluntarily imposed upon themselves even higher standards of training, knowledge, and skill, it appears to the Committee that fire sprinkler systems can be installed without the degree of specialized skill and training contemplated by the assessment review. The level of training, skill, and knowledge required to competently install fire sprinkler systems appears to be no greater than the level required for other ordinary, unlicensed professions, including other contracting professions.

(4) A substantial majority of the public have sufficient knowledge or experience to evaluate the competence of fire sprinkler contractors.

Generally, the persons who will use the services of fire sprinkler contractors are the developers, builders, owners, and/or tenants of commercial and industrial buildings. Unlike average members of the public, these persons are generally sophisticated, knowledgeable businessmen who are in a better position than the average person to evaluate the services offered by and the competence of fire sprinkler contractors. A substantial majority of the public that actually uses the services of fire sprinkler contractors would therefore have sufficient knowledge to evaluate these contractors.

(5) The Committee makes no determination whether licensure of fire sprinkler contractors would have a substantial adverse economic impact upon consumers of their services.

(6) The public can be effectively protected by other means.

Automatic sprinklers are required by statute and/or by Building Code regulation in certain types of structures (N.C. Gen. Stat. §69-29; State Bldg. Code, §901.7). The North Carolina State Building Code provides that the installation of automatic sprinklers must be reasonably safe to persons and property (§901.8). Only approved sprinklers and devices may be used in

**Preliminary Report
Fire Sprinkler Contractors
Page Three**

automatic sprinkler systems and the complete layout of the system must be submitted to the building inspector for approval before installation (§901.1).

The local building inspectors responsible for inspecting the installation of automatic sprinklers are required by law to be qualified for their work and must be certified by the North Carolina Code Officials Qualification Board. The certification sets forth the performance level (for example, certain types and sizes of structures) for which the inspector is qualified. (N.C. Gen. Stat. §143-151.13, §153A-351.1, §160A-411.1).

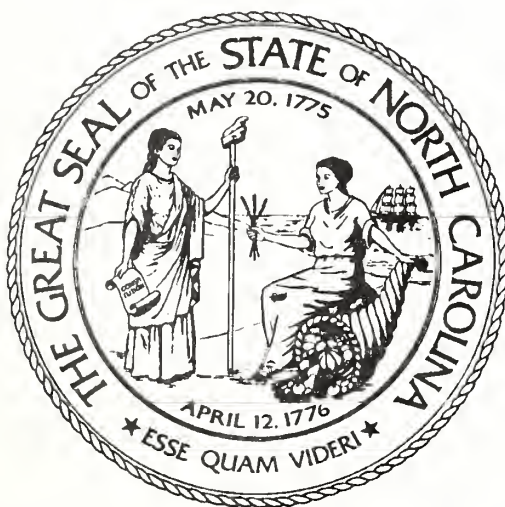
In addition, individual insurance companies and insurance service organizations also inspect fire sprinklers for rating purposes. Although it is not their duty to enforce the Building Code, there is no documentation that their inspections are in any way inadequate. An insurer would have a great deal of incentive to perform or have performed on his behalf a thorough inspection because of the enormous risk to be undertaken in insuring the structure.

If improper installation of fire sprinklers is going undetected by local building inspectors, the appropriate recourse would be to increase the training or awareness of inspectors with respect to fire sprinklers rather than requiring the contractors who install the sprinklers to be licensed.

LCONLB-22

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

MASONRY CONTRACTORS



PRELIMINARY ASSESSMENT REPORT (SENATE BILL 969)

JUNE 7, 1989

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27611



June 8, 1989

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RECOMMENDATION:

The Legislative Committee on New Licensing Boards recommends that the General Assembly do not give favorable consideration to legislation proposing the licensure of masonry contractors.

FINDINGS:

There are an estimated 600 masonry contractors in the State of North Carolina. A masonry contractor is one who engages in the business of performing construction or repair work involving the use of brick, stone, concrete masonry units, glass block, grout fill, and similar materials. A person who supplies such materials would also be deemed a masonry contractor under Senate Bill 969. Senate Bill 969 would require the licensure only of masonry contractors, not journeymen or apprentice masons.

Under Senate Bill 969, two classes of masonry licenses (Class I and Class II) would be issued. Class I licenses are further divided into limited, intermediate, and unlimited licenses. A Class I limited license would permit masonry work of up to \$100,000 on commercial projects. A Class I intermediate license would permit masonry work of up to \$250,000 on commercial projects. A Class I unlimited license would permit masonry work on any project without regard to the value of the work to be performed. A Class II license would be available for a person involved only in residential projects.

All applicants for licensure, regardless of class, must complete an apprenticeship period and pass an exam. In addition, the proposed State Board of Examiners in Masonry Contracting would appear to be authorized under proposed G.S. 87-123 to impose additional experience and ability requirements beyond the apprenticeship training on Class I intermediate and unlimited licenses. Proposed G.S. 87-123 would also require a Class I intermediate licensee to maintain a working capital of \$25,000 and a Class I unlimited licensee to maintain a working capital of \$35,000.

All applicants must also provide evidence that there are no IRS or N.C. Department of Revenue tax liens filed against them. Although Senate Bill 969 does not specify the length of the required apprenticeship period, the Committee has been provided with a proposed apprenticeship agreement between the North Carolina Mason Contractors Association and the North Carolina Department of Labor that indicates the term of apprenticeship could consist of 6,000 hours of on-the-job training and 216 hours of related classroom instruction.

The Committee finds that the practice of masonry contracting does not possess qualities that distinguish it from ordinary labor nor does it require specialized skill or training, even though training is currently available through apprenticeship programs and vocational educational courses.

The Committee also finds that the unregulated practice of masonry contracting will not substantially harm or endanger the public and that the majority of the users of masonry contracting services are capable of evaluating the competence of the contractors. Although the Committee recognizes the potential of property damage and personal injury and even death from collapsing walls, chimney fires, and related events attributable to faulty masonry work, there is little evidence that such events have become a widespread problem warranting licensure.

The Committee also finds that, in spite of the proposed grandfather clause, the licensing of masonry contractors may effectively prevent many small contractors from engaging in the business. The potentially lengthy apprenticeship period and the financial responsibility requirements would be particularly burdensome to small masonry contracting businesses.

The Committee also finds that the public can be adequately protected by other means. The North Carolina State Building Code requires all masonry construction to conform to the Code. The Building Code regulates the quality of masonry materials used, wall thickness, lateral support, anchorage, bonding, and related facets of masonry construction (State Building Code, Vol. I, Ch. 14, §1401 - §1414). The Code also specifies fire resistance standards for construction materials, including masonry materials, used in buildings (Code, Vol. I, Ch. 25, §2501.1 et seq.). The Code also regulates the construction of masonry chimneys (Code, Vol. I, Ch. 27). The State Building Code is enforced by local building inspectors.

The Committee finds that the protections afforded by the State Building Code, and the enforcement of the Code by local building inspectors is sufficient to adequately protect the public, and that licensure is not necessary.

LCONLB-26

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

NAIL SCULPTORS



PRELIMINARY ASSESSMENT REPORT (HOUSE BILL 687)

MAY 31, 1989

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27611



June 8, 1989

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The findings and recommendations of the Legislative Committee on New Licensing Boards are not binding upon the General Assembly or its committees. A bill that receives an unfavorable final assessment report from the Legislative Committee on New Licensing Boards may be considered in spite of the unfavorable assessment report.

The membership and staff of the Legislative Committee on New Licensing Boards for the 1989-1990 session is listed below:

Representative John Tart, Chairman
Representative Howard Barnhill
Representative Harold Brubaker
Representative William Hurley
Representative Barney Paul Woodard

Senator Marc Basnight
Senator Howard Bryan
Senator David Parnell
Senator Marshall Rauch

Clerk: Margaret Wallace
(919) 733-5824

Counsel: Linwood Jones
(919) 733-2578

Additional copies of this report may be obtained from the Legislative Library after June 14, 1989.

RECOMMENDATION:

The Committee on New Licensing Boards recommends that the General Assembly do not consider legislation proposing to license nail sculptors and to extend licensing to non-shop manicurists.

FINDINGS AND CONCLUSIONS:

(1) The unregulated practice of nail sculpting and unregulated nail salons will not substantially harm or endanger the public health, safety, or welfare.

The practice of nail sculpting is a relatively new technology that involves the application of an acrylic base to a person's nails, followed by the shaping of the nails to repair them, make them longer, etc. Manicuring is a different type of nail treatment that involves filing, cleaning, and polishing of nails and does not involve the artificial construction of nails through the use of an acrylic base.

N.C. Gen. Stat. §88-30 currently provides in part as follows:

"A person shall be a registered manicurist to engage in the practice of manicuring or pedicuring in a cosmetic art shop, beauty parlor or hairdressing establishment and that person may be a registered manicurist without being a registered cosmetologist."

Although there is other statutory language (N.C. Gen. Stat. §80-1, §80-2) that appears to give the Board of Cosmetic Arts power to regulate manicurists practicing outside of beauty shops, it is generally understood that N.C. Gen. Stat. §80-30 (along with N.C. Gen. Stat. §80-22(6)) is controlling. Therefore, the Board lacks the authority to regulate manicurists practicing outside of beauty shops. House Bill 687 would give the Board this authority.

There has been no showing of a need to require the licensure of nail sculptors and manicurists practicing outside of beauty shops. The imposition of licensing in 1963 for manicurists working in beauty shops appears to have been a mere incidence to the licensing and sanitary inspection of beauty shops. Concerns about the spread of germs and contagious diseases at unlicensed and uninspected nail salons are legitimate, but there have not been extensive complaints about sanitary conditions at these facilities to justify mandatory licensing of persons providing these services and mandatory inspection of their shops.

(2) The practice of nail sculpting does not possess qualities that distinguish it from ordinary labor.

Nail sculpting does not possess any qualities that distinguish it from ordinary labor. The Committee does not make any determination whether the licensing of shop manicurists is appropriate since the Committee's jurisdiction does not extend to existing licensed professions.

(3) The practice of nail sculpting does not require specialized skill and training.

The practice of nail sculpting does not require specialized skill and training. The fact that registered manicurists must complete 150 hours of training, apportioned as follows (pursuant to 21 N.C.A.C. 14K.0002), is not sufficient evidence that the practice of nail sculpting requires special skills or training:

100 hours	Actual practice
25 hours	Arm and hand massage
25 hours	Theory & salesmanship

(4) A substantial majority of the public have sufficient knowledge or experience to evaluate the competence of nail sculptors and manicurists.

Public users of nail sculpting services and unregulated nail salons can judge for themselves the competence and qualifications of the practitioners. Unsanitary facilities and practices will generally be visible to the attentive customer. The marketplace will itself eliminate incompetent practitioners.

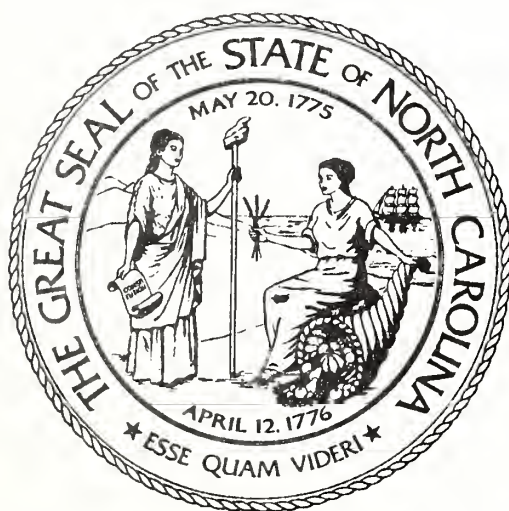
(5) The Committee makes no finding whether licensure of nail sculptors and non-shop manicurists would have a substantial adverse economic impact upon consumers of their services.

(6) The public can be effectively protected by other means.

The marketplace is sufficient to protect the public from incompetent nail sculptors and manicurists. In addition, local health directors are authorized to investigate the causes of infectious, communicable, and other diseases (N.C. Gen. Stat. §130A-41(b)(3)) that might be traced back to a nail salon, thus assuring the public of an available means to identify and eliminate unsanitary facilities.

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

RADIOLOGIC TECHNOLOGY



PRELIMINARY ASSESSMENT REPORT (HOUSE BILL 1070)

MAY 31, 1989

RECOMMENDATION

The Committee on New Licensing Boards recommends that the General Assembly favorably consider legislation proposing to require the licensing of radiologic technologists.

FINDINGS AND CONCLUSIONS:

(1) The unregulated practice of radiologic technology will substantially harm or endanger the public health, safety or welfare and the potential for such harm is recognizable.

Approximately two out of every three persons receive x-ray examinations each year. Although the Committee makes no finding as to the accuracy of reports that ionizing radiation causes biological damage to patients, it does recognize that the use of radiation for treatment and diagnosis of diseases may produce potentially harmful side effects for the exposed patient.

the Bureau of Radiologic Health of the United States Department of Health, Education and Welfare estimates that nearly 30 percent of our population is exposed to x-rays that are unproductive and contribute nothing to patient diagnosis. Untrained, inexperienced or incompetent operators of x-ray equipment may overexpose a patient to unnecessary radiation or produce an x-ray whose poor quality leads to a misdiagnosis by the attending physician. Such operator errors could be minimized by a licensing plan that would require sufficient education and an examination to ensure the competency of each operator.

A physician's oversight of x-ray examinations is generally limited to ordering the examination and does not extend to overseeing the actual operation of the x-ray equipment by the operator. In addition, only one-third of the estimated number of x-ray equipment operators have met the educational requirements for voluntary certification by the American Registry of Radiologic Technologists.

(2) The practice of radiologic technology possesses qualities that distinguish it from ordinary labor.

The use of radiation for treatment and diagnosis of diseases may produce harmful side effects to patients exposed to radiation. The adoption of regulations by the North Carolina Radiation Protection Commission, pursuant to statute, evidences North Carolina's recognition that the use of radiation in the medical profession may subject patients to adverse risks not common to other professions that deal with the public.

(3) The practice of radiologic technology requires specialized skill and training.

As stated in the report from the North Carolina Society of Radiologic Technologists, "the performance of even the most basic, routine x-ray studies require essential knowledge and understanding of the safe operation of x-ray equipment, selection of exposure factors, selection of ancillary equipment (image recording systems), radiation beam adjustment and collimation, proper positioning of patients, and many other factors in order to produce an optimum diagnostic examination. Operator errors in any part of the imaging process result in poor quality studies, frequently requiring repeat examinations, which contributes unnecessarily to the patients' radiation exposure and exacerbates the cost of health care services."

(4) A substantial majority of the public do not have sufficient knowledge or experience to evaluate the competence of radiologic technologists.

Most patients undergoing an x-ray examination or radiation treatment assume the individual administering the radiation is well-trained in the use and operation of x-ray equipment and the proper administration of radiation. However, there are no minimum qualifications of education, training or experience for x-ray equipment operators, except for those who seek the voluntary certification offered by the American Registry of Radiologic Technologists. In most instances, a patient does not question the competency of an operator of x-ray equipment since the patient relies on his physician (or other practitioner), who orders the examination; however, the practitioner ordering the examination does not normally conduct the x-ray examination.

(5) The Committee makes no determination as to the economic impact of licensing.

(6) The Committee concludes that the public cannot be effectively protected by other means.

There is some regulatory control over the use of radiation for medical application. The North Carolina Radiation Protection Act, Chapter 104E of the General Statutes, provides that the North Carolina Radiation Protection Commission may adopt rules governing the use of radiation machines. Pursuant to its statutory authority, the Commission requires that all x-ray machines be registered and that all x-ray examinations be ordered by a licensed practitioner. However, Chapter 104E explicitly states that the Radiation Protection Act does not require "the licensing of individual natural persons involved in the use of radiation machines or radioactive materials for medical diagnosis or treatment." (G.S. 104E-5(17)). The Committee concludes that

the Radiation Protection Act does not sufficiently address the potential problems that may be attributed to operator error or negligence.

Although the American Registry of Radiologic Technologists offers certification for those technologists who meet the educational requirements of the program, the certification is voluntary and only one-third of the active x-ray equipment operators are certified.

The Committee recognizes that licensing of radiologic technologists may lead to increased costs for practitioners who are presently using nurses and other individuals not as extensively trained as radiologic technologists for the operation of x-ray equipment. However, the Committee believes that the possible dangers presented by inexperienced and untrained operators and the costs, both economical and biological, of repeated examinations due to operator error offset the potential increased costs to practitioners.

The Committee also notes the report of the Legislative Research Commission on New Health Occupational Licensing Boards, which recommended that the General Assembly favorably consider legislation to license radiologic technologists.

LCONLB-24

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

REAL ESTATE APPRAISERS



PRELIMINARY ASSESSMENT REPORT (HOUSE BILL 492)

MAY 31, 1989

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27611



MAY 31, 1989

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The findings and recommendations of the Legislative Committee on New Licensing Boards are not binding upon the General Assembly. A bill that receives an unfavorable assessment report from the Legislative Committee on New Licensing Boards may be considered in spite of the unfavorable assessment report, although standing committees have historically refused to further consider any legislation that has failed to receive a favorable assessment report from the Legislative Committee on New Licensing Boards.

The membership and staff of the Legislative Committee on New Licensing Boards for the 1989-1990 session is listed below:

Representative John Tart, Chairman
Representative Howard Barnhill
Representative Harold Brubaker
Representative William Hurley
Representative Barney Paul Woodard

Senator Marc Basnight
Senator Howard Bryan
Senator David Parnell
Senator Marshall Rauch

Clerk: Margaret Wallace
(919) 733-5824

Counsel: Linwood Jones
(919) 733-2578

Additional copies of this report may be obtained from the Legislative Library after June 7, 1989.

RECOMMENDATION:

The Legislative Committee on New Licensing Boards recommends that the General Assembly give favorable consideration to legislation (Committee Substitute to HB 492) allowing for voluntary certification of real estate appraisers.

NOTE:

As originally introduced, House Bill 492 would have required persons engaging in real estate appraisal to be licensed as real estate brokers or real estate salesmen and would have provided an additional tier of voluntary certification. Prior to the appointment of the Legislative Committee on New Licensing Boards, House Bill 492 was amended (by Committee Substitute) by deleting the mandatory licensure requirement and substituting a voluntary licensure provision. Voluntary licensure and voluntary certification programs are not within the jurisdiction of the Legislative Committee on New Licensing Boards. However, since the original bill was a mandatory licensure bill and was therefore within the Committee's jurisdiction (and technically could not be amended without receiving an assessment report from the Committee), the bill sponsor has submitted the bill to the Committee for review.

FINDINGS:

The Committee's findings are limited to the proposal to provide for voluntary certification of real estate appraisers. In the event that the mandatory licensure provision is restored to House Bill 492, a supplementary report pursuant to G.S. 120-149.3(e) may be requested by the appropriate committee chairman, the Speaker, the President Pro Tempore, or the bill sponsor.

Incompetence and fraud in real estate appraisals may harm both individual and institutional consumers of real estate appraisal services. It is the real estate appraiser who establishes the value of the property used as collateral for a loan or investment. Overvalued collateral may lead purchasers to pay more than the market value for the appraised property and may leave a lending institution grossly undersecured on loans made in reliance on the appraisal. In fact, recent testimony before Congress revealed that fraudulent and incompetently-performed appraisals have directly contributed to the insolvency of hundreds of financial institutions nationwide and have contributed to the loss of billions of dollars to mortgage lenders, private mortgage insurers, investors in mortgage-backed securities, and to several federal agencies, especially those that administer the Federal Deposit Insurance funds and mortgage guarantee programs.

In light of the seriousness of faulty real estate appraisals and their adverse effect on the lending and thrift institutions, the federal government has recently taken action that will impact on the practice of real estate appraising. In November, 1988, the federal Office of Management and Budget issued a circular requiring the use of state-regulated real estate appraisers for certain VA, FHA and other loans after July 1, 1991. In addition, Congress, believing that the lack of State regulation of real estate appraisers is a primary cause of faulty and fraudulent appraisals, appears to be on the verge of enacting legislation requiring the use of "state-licensed" or "state-certified" appraisers for all appraisals in federally-related transactions, as generally determined by the Federal Interagency Appraisal Council. The North Carolina Real Estate Commission estimates that this requirement would cover 87 percent of the appraisal work performed in North Carolina.

Appraising real estate requires special knowledge of appraisal principles and practices including a thorough understanding of property ownership and interests, land use controls, property descriptions, real estate transactions, lending practices, basic housing construction, and related factors. There are approximately 30 appraisal trade organizations now in existence, many of which confer appraisal designations on their members without regard to their competency. The public is therefore unable to determine qualified, competent appraisers without a licensing or certification board that will ensure such competency.

In light of the findings that the public would be better served by a certification board that will allow competent, trained professional appraisers to distinguish themselves through voluntary credentialing, and in light of the fact that pending federal legislation will require a State certification program for persons engaging in nearly ninety percent of the real estate appraisal transactions in North Carolina, the Committee recommends that the General Assembly favorably consider the committee substitute to House Bill 492.

LCONLB-25

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

RESPIRATORY THERAPY



PRELIMINARY ASSESSMENT REPORT (HOUSE BILL 528)

MAY 31, 1989

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27611**



June 8, 1989

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Senator Marshall Rauch

Clerk: Margaret Wallace
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Counsel: Linwood Jones
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Additional copies of this report may be obtained from the Legislative Library after June 14, 1989.

RECOMMENDATION:

The Committee on New Licensing Boards recommends that the General Assembly do not give favorable consideration to legislation proposing the licensing of respiratory care therapists.

FINDINGS:

There are nearly 1,900 persons practicing respiratory care in North Carolina. Nearly three-fourths of these practitioners have received formal training and have voluntarily been certified by the National Board for Respiratory Care.

Some hospitals and home health care agencies require certified respiratory therapists and some do not. The Committee has no knowledge of how many of the health care providers require certification and how many do not. There are nearly 13,000 home health care patients who receive home respiratory care. State law provides generally for the supervision of home health care workers, including respiratory care therapists, and requires these workers to be assigned only to duties for which they are properly trained.

Respiratory care therapy involves the treatment, management, diagnostic testing, control and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system. The skills required of a respiratory care therapist include, among other skills, the administration of medical gases, breathing treatments, delivery or pharmacological agents, use of life support equipment, cardiopulmonary resuscitation, insertion of artificial airways, arterial blood sampling, pulmonary function testing, and heart function measurements. However, under the proposed licensure plan, the respiratory care therapist must be acting "in accordance with the written or verbal order of a licensed physician" (HB 528, proposed G.S. 90-352(2)).

The Committee finds that the skills and training required of respiratory therapists do not differ from ordinary labor significantly enough to justify licensure. The Committee notes in particular that the required training for licensure as proposed in House Bill 528 is a high school education (or equivalent) and an unspecified curriculum in a respiratory care school to be approved by the proposed Board. The level of training and knowledge required to practice respiratory care does not appear to be great enough to mandate licensure of the profession.

The Committee also finds that the primary users of respiratory care services -- hospitals and home health care agencies -- are knowledgeable enough to evaluate the competency of respiratory care therapists.

**Preliminary Report
Respiratory Therapy
Page Two**

The Committee makes no determination whether licensure would have an adverse economic impact on users of respiratory care services. There was mixed testimony before the Committee on this issue, some indicating that the use of respiratory therapists resulted in lower costs than the use of unlicensed personnel and conflicting testimony indicating that licensure would increase the costs of health care by providers, which in turn would be passed on to patients.

The Committee does find that the public can be effectively protected by other means. The current voluntary certification process seems to have attracted nearly three-fourths of the persons practicing in respiratory care, and the Committee believes that the major users of respiratory care services -- hospitals and home health care agencies -- can rely on the voluntary certification process in hiring respiratory care therapists. The use of the voluntary national credentialing program allows the marketplace to regulate the profession and the use of respiratory care services.

Although the home health care setting does not provide the same direct physician oversight as in the hospital setting, the law does require that persons working for home health care agencies, including respiratory therapists, be under the supervision of either a licensed physician or a registered nurse in providing services in accordance with the orders of the physician responsible for the care of the patient and under a plan of treatment established by such physician (10 N.C.A.C. 3L.0205(c)). The law also requires that persons who work for home health care agencies be assigned only to those duties for which they are trained and competent to perform (10 N.C.A.C. 3L.0207(c)).

The Committee did not find compelling evidence to justify the licensure of the practice of respiratory therapy, and therefore is unable to recommend a favorable assessment report for House Bill 528.

LCONLB-20

